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STATE OF FLORIDA
ELECTIONS COMMISSION

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: Paul Paulson

Case No.: FEC 15-453

ORDER OF NO PROBABLE CAUSE

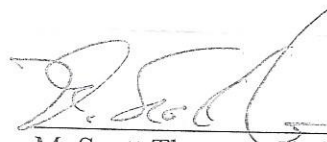
THIS MATTER was heard by the Florida Elections Commission (Commission) at its regularly scheduled meeting on August 16, 2016, in Tallahassee, Florida.

Based on the Complaint, Report of Investigation, Staff's Recommendation, and oral statements (if any) made at the probable cause hearing, the Commission finds that there is **no probable cause** to charge the Respondent with the following violation:

Section 106.143(3), Florida Statutes: Respondent, a 2015 candidate for Mayor for the City of Orlando, campaigned based on his party affiliation, even though the office for which he was running was nonpartisan.

Therefore, it is **ORDERED** this case is **DISMISSED**.

DONE AND ORDERED by the Florida Elections Commission on August 16, 2016.



M. Scott Thomas, Chairman
Florida Elections Commission

Copies furnished to:
Eric M. Lipman, General Counsel
Paul Paulson, Respondent
Nancy C. Jacobson, Complainant

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STAFF RECOMMENDATION FOLLOWING INVESTIGATION

Pursuant to section 106.25(4)(c), Florida Statutes, undersigned staff counsel files this written recommendation for disposition of the referral in this case recommending that there is **no probable cause** to charge Respondent with violating **Section 106.143(3), Florida Statutes**. Based upon a thorough review of the Report of Investigation submitted on April 18, 2016, the following facts and law support this staff recommendation:

1. On October 22, 2015, the Florida Elections Commission ("Commission") received a complaint from Nancy P. Jacobson ("Complainant") alleging that Paul Paulson ("Respondent") violated Chapter 106, Florida Statutes.
2. Respondent was a candidate for the office of Mayor for the City of Orlando, a nonpartisan office; he was defeated in the November 3, 2015 municipal election. Mr. Paulson is a former member of The Florida Bar and was admitted on May 15, 1986. (ROI Exhibit 1)¹
3. Complainant is a county political party state committee woman in Orlando, Florida and a former member of The Florida Bar; she was admitted on October 22, 1984. (*Id.*)
4. Complainant alleged that Respondent, as a candidate in a nonpartisan race, published and approved a political advertisement in the form of a letter that disclosed his political party affiliation in a manner that violated Florida election law. (ROI page 1) Complainant provided a copy of that letter with her complaint. The advertisement discloses Respondent's political party affiliation, and based upon its narrative, it would appear that he campaigned based on party affiliation. It utilized the phrases: "The choice will be between Democrat Buddy Dyer and Republican Paul Paulson," and "There are huge philosophical differences between Republican and Democrat concepts of government," and "Vote Republican ... vote Paul Paulson for Mayor!" (ROI Exhibit 2)
5. On December 28, 2015, the Executive Director notified Respondent in writing that Commission staff had authority to investigate the following statutory provisions:
Section 106.143(3), Florida Statutes: Respondent, a 2015 candidate for Mayor for the City of Orlando, campaigned based on his party affiliation, even though the office for which he was running was nonpartisan, as alleged in the complaint.

¹ The Report of Investigation is referred to herein as "ROI."

Alleged Violation: Section 106.143(3), Florida Statutes

6. Section 106.143, Florida Statutes, addresses the requirements pertaining to political advertisements circulated prior to an election. Section 106.143(3), Florida Statutes, provides in pertinent part:

... A political advertisement of a candidate running for nonpartisan office may not state the candidate's political party affiliation. This section does not prohibit a political advertisement from stating the candidate's partisan-related experience. A candidate for nonpartisan office is prohibited from campaigning based on party affiliation. (Emphasis added)

7. On September 1, 2015, Respondent filed his Statement of Candidate (DS-DE 84) for his 2015 municipal campaign for Mayor of Orlando with his filing officer, Celeste T. Brown, Orlando City Clerk; Respondent signed this form on August 31, 2015. The document states that he had "been provided access to read and understand the requirements of Chapter 106, Florida Statutes." (ROI Exhibit 12)

8. Also on September 1, 2015, the city clerk's office referred Respondent to its website and the Florida Division of Elections' ("DOE") website. (ROI Exhibit 9) According to the clerk's office, candidates were given a checklist of all forms and documents received and were told that hard copies of the *Candidate and Campaign Treasurer Handbook* and the election laws, including Chapters 104 and 106, Florida Statutes,² were easily accessible and obtainable at DOE's website. (ROI Exhibit 11)

9. On or before October 19, 2015, the political advertisement, that is the subject of the instant case, was published.

10. On October 19, 2015, the Complainant swore to the facts in the Confidential Complaint Form that the Commission received on October 22, 2015.

11. On October 23, 2015, the Commission sent Respondent a copy of the complaint and a letter, stating "The respondent shall have 14 days *after receipt* of the complaint to file an initial response, and the executive director may not determine the legal sufficiency of the complaint during that time period." The letter was sent via United States Postal Service ("USPS") certified mail.

12. On October 28, 2015, according to the USPS online tracking website, the letter was received.

² In his Affidavit of Background Information, Respondent wrote that he had read Chapter 106, Florida Statutes. (ROI Exhibit 7, page 2, item 10)

13. On November 23, 2015, Respondent dated his submitted response to the complaint in the form of a Motion to Dismiss. Respondent stated he did not approve the political advertisement and noted that the letter is a "cut and paste, photo copy of a photo copy...." Respondent asserted "I did not write, read the letter, and did not approve of it." The Commission received this response on November 30, 2015. (ROI Exhibit 3)

14. Respondent stated "The undersigned did not *a priori* see, read, review, approve or write the alleged letter. The signature appears to be a photocopy of his signature, the undersigned did not physically or actually sign this alleged letter, it appears to be a cut and paste creation." Respondent also referenced the Orlando City Code and an opinion by the DOE. (ROI Exhibit 3)

15. Also on November 23, 2015, an affidavit was executed by Douglas Guetzloe, in which he declared "I was the sole author of the subject letter and caused its distribution. I did not show the letter to Neil 'Paul' Paulson until a few days after it had been mailed." Respondent provided this affidavit to the Commission staff via email on April 6, 2016. (ROI Exhibit 6)

16. On December 31, 2015, Commission staff conducted a telephone interview with Respondent, who reiterated that he "did not approve" the letter political advertisement in question; he also noted he did not create nor disseminate the item." He explained that he was shown an advertisement after-the-fact by Douglas Guetzloe, a campaign consultant, but was uncertain if the ad he saw was the same as the color letter advertisement submitted by Complainant. (ROI Exhibit 1, page 1)

17. On April 6, 2016, Commission staff received the above mentioned affidavit of Mr. Guetzloe from Respondent via email. (ROI Exhibit 6)

18. On April 8, 2016, Respondent executed an Affidavit of Background Information and acknowledged that he had copies of Chapters 104 and 106, Florida Statutes, and had read them. (ROI Exhibit 7, page 2, items 9 through 17) Respondent declared "Two days after he [Guetzloe] mailed it he showed me a copy and I expressed alarm over what he did. Guetzloe provided a copy of a Sentinel article (March 27, 2004) which he understood to mean that the statute did not apply." (ROI Exhibit 7, page 4, item 24) As to what action he took to correct the letter political advertisement, or inform the public during his campaign that he did not authorize the ad, Respondent said "I posted on Facebook to inform the public," (ROI Exhibit 7, page 3, item 22) As to additional comments, Respondent wrote "In the instant case, I had no knowledge, nor did I participate or approve of Mr. Guetzloe's letter." (ROI Exhibit 7, page 4, item 25)

19. On April 18, 2016, Commission staff telephone Respondent and advised him of the substance of the completed investigation and gave him an opportunity to respond. Respondent said that Mr. Guetzloe was "reckless and careless about some details," and is not a lawyer. Respondent suggested that Guetzloe relied on a newspaper article rather than the law. Respondent reiterated that pursuant to *Fulton v. Division of Elections*, "I cannot be held responsible for something I didn't know about." (ROI Exhibit 1. Page 4, item 12)

20. "Probable Cause" is defined as reasonable grounds of suspicion supported by circumstances sufficiently strong to warrant a cautious person in the belief that the person has

committed the offense charged. *Schmitt v. State*, 590 So.2d 404, 409 (Fla. 1991). Probable cause exists where the facts and circumstances, of which an [investigator] has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. *Department of Highway Safety and Motor Vehicles v. Favino*, 667 So.2d 305, 309 (Fla. 1st DCA 1995).

As previously stated under Section 106.143(3), Florida Statutes, a candidate for nonpartisan office is prohibited from campaigning based on party affiliation and the political advertisement of such a candidate may not state the candidate's political party affiliation.

In the instant case, to prove a violation of Section 106.143(3), Florida Statutes, there must be clear and convincing evidence that Respondent was as a candidate for election to a nonpartisan office, and that he campaigned for that office based on party affiliation by stating his political party affiliation in a political advertisement.

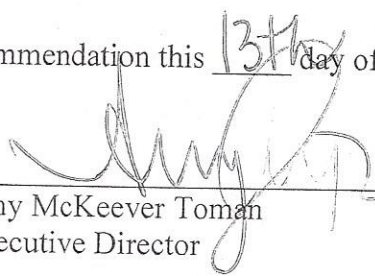
The facts set forth above show that Respondent was a candidate for the office of Mayor for the City of Orlando, a nonpartisan office and had read Chapters 104 and 106, Florida Statutes. The complained of letter was clearly a political advertisement and partisan in its content. When shown a copy of the ad, Respondent expressed alarm; he also dissociated himself from the ad on Facebook. Throughout, Respondent has maintained that he did not create, read, write, review, sign, approve, or disseminate the political advertisement at issue. In support of that assertion, Douglas Guetzloe executed an affidavit in which he declared sole responsibility for writing and distributing the advertisement.

Based upon these facts and circumstances, I recommend that the Commission find that there is **no probable cause** to charge Respondent with violating **Section 106.143(3), Florida Statutes**.

Respectfully submitted on July 13, 2016.


Michael T. McGuckin
Assistant General Counsel

I reviewed this Staff Recommendation this 13th day of July 2016.


Amy McKeever Toman
Executive Director